IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 161 OF 2005

Novartis India Ltd. ...Petitioner.

Versus

Association of Chemical Workers & Ors. ...

Respondents.

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Mr. J.P. Cama with Mr. K.T. Rai i/b. Sanjay Udeshi & Co.for the Petitioner.

Mr. S.K. Talsania with Ms.Nandini Menon for Respondent No.2.

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CORAM : DR. D.Y. CHANDRACHUD, J.

27th January 2005.

ORAL JUDGMENT :

In this matter, on 11th January 2005, a notice was issued to

the First Respondent and the Court directed that the notice must indicate that the matter will be heard and finally disposed of at the stage of admission. Though served, the First Respondent has not appeared.

2. The Petitioner is a Company incorporated under the Companies Act, 1956 and was formerly known as Sandoz (India) Ltd.. Pursuant to the merger of Sandoz (India) Ltd. with Hindustan Ciba Geigy Ltd. in 1997, a Company known as Novartis India Ltd., the Petitioner came to be formed. The Petitioner employs a category of workmen known as Medical Representatives in its Pharmaceutical Division to whom the present dispute relates. On 29th June 1992, the First Respondent served a Charter of demands on the Petitioner which was referred for adjudication by the appropriate Government on 25th September 1995 under Section 10 of the Industrial Disputes Act, 1947. The First Respondent filed its Statement of claim on 25th January 1996. The Petitioner filed its written statement on 11th June 2003. The Second Respondent filed an application on 13th April 2004

for being impleaded as a necessary and proper party to the proceedings inter alia on the ground that it exclusively represents all the Medical Representatives engaged by the Petitioner. The Industrial Tribunal rejected the application. The order of rejection was affirmed by a Learned Single Judge of this Court and in appeal by a Division Bench. Thereupon, applications were moved by 182 Medical Representatives for impleadment which were also dismissed and the Petitions challenging the order of the Industrial Tribunal were dismissed by a Learned Single Judge.

3. On 18th November 2004, a Memorandum of settlement was arrived at between the Second Respondent and the Petitioner in the course of conciliation proceedings under Section 18(3) read with Section 12(3) of the Industrial Disputes Act, 1947. The settlement inter provides that the Second Respondent was representing the permanent Medical Representatives employed by the Petitioner at various locations. Clause 1.1.1 of the settlement which deals with eligibility and coverage, inter alia provides that all Medical

Representatives who were on the rolls of the Petitioner as on 1st January 2003 and were receiving the benefit of Dearness Allowance as on that date, shall continue to remain under a salary structure which shall have the benefit of dearness allowance as one of the components of the total compensation and shall receive benefits in accordance with Dearness Allowance Scheme of the Company. An application was filed by the Petitioner on 3rd December 2004 before the Industrial Tribunal and it is averred therein that a settlement has been arrived at on 18th November 2004 during the course of conciliation proceedings by which all disputes in respect of the revision of the general conditions of service of Medical Representatives employed by the Petitioner including the dispute which forms the subject matter of the pending reference before the Industrial Tribunal have been settled. In the circumstances, a prayer was made before the Industrial Tribunal for disposal of the pending reference in terms of the settlement in conciliation proceedings. In support of the application, there was inter alia an affidavit dated 14th December 2004 of Vikrant Vidyadhar Bhuskute, employed by the

Petitioner as a Manager, Human Resources, in which it was inter alia stated that the Second Respondent with whom the settlement is arrived, is a registered Trade Union, representing all the employees employed by the Petitioner as Medical Representatives and that not even a single employee engaged as a Medical Representative is a member of the First Respondent at whose behest a reference has been made. In the affidavit, it was also categorically averred that all the Medical Representative engaged by the Petitioner have received benefits flowing out of the aforesaid settlement.

4. The application filed by the Petitioner was opposed by the First Respondent. In its reply dated 14th December 2004, the First Respondent did not admit the settlement and sought to submit that the demand raised by the Association was for employees employed all over India whereas the settlement did not clarify as to whom it was applicable. It was stated that there was no recognised Union and since the reference has been made after conciliation had failed, it was surprising as to how in 2004 a conciliation could have taken place in

respect of the same demands.

5. The application was dismissed by the Industrial Tribunal by the impugned order dated 21st December 2004. The Industrial Tribunal held that nothing had been submitted or pointed out before it as to how, when a Reference was pending for adjudication, there could be a second conciliation proceeding. The Tribunal was of the view that "no convincing submission or provision" has been pointed out as to how the reference could be disposed of. Reliance was inter alia sought to be placed before the Tribunal on several judgments of the Supreme Court. The Tribunal, however, responded by stating that while there was no dispute about the proposition of law laid down therein, the reference has been made out of a Charter of Demands submitted by the First Respondent for employees engaged all over India and when the First Respondent has been pursuing the reference which was at the stage of trial, it could not be disposed of on the basis of a settlement arrived at in the course of conciliation. The matter, according to the Industrial Tribunal, was pending for some time for recording evidence and it was open to the Petitioner to file an

application recording the closure of its evidence and that a submission could be made at the stage of final hearing. The application was accordingly dismissed with an order of costs.

6. Counsel appearing on behalf of the Petitioner urges that the Supreme Court has in several judgments emphasised the importance of a resolution of industrial conflicts by settlement. Settlements which are arrived at in the course of conciliation are given statutory recognition and are placed on a high pedestal by the provisions of Section 18(3) of the Industrial Disputes Act, 1947. The case of the Petitioner being that a settlement was arrived at with the Second Respondent which represented all the employees in the category of Medical Representative and who have received benefits flowing out of the settlement, the Industrial Tribunal was manifestly in error in not considering the application filed by the Petitioner on merits.

7. Having heard the Learned Counsel, I am of the view that in view of the settled position in law, the approach of the Industrial

Tribunal was misconceived and that the interference of this Court under Article 226 of the Constitution is accordingly warranted. In **Sirsilk Ltd. vs. Government of Andhra Pradesh,** AIR 1964 SC 160, a settlement was arrived at after the Industrial Tribunal had sent its award to the Government, but before the award could be published under Section 17 of the Industrial Disputes Act, 1947. The Supreme Court held that the only way to resolve the possible conflict which would arise between a settlement which is binding under Section 18 (1) and an award which may become binding under section 18(3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under Section 18(1) has been arrived at. The Supreme Court then held as follows :

> "There is no doubt that a settlement of the dispute between the parties themselves is to be preferred where it can be arrived at to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to

there being goodwill between them."

In fact, the Court held that once a settlement is arrived at, there would remain no dispute that would be left for being resolved by industrial adjudication :

> "The reference to the Tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement is arrived at between he parties to a dispute before the tribunal after the award has been submitted to Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award."

In **New Standard Engg. Co. Ltd. vs. M. L. Abhyankar**, 1978 1 LLJ 487, a Bench of three Learned Judges of the Supreme Court held that "settlement of labour disputes by direct negotiation or settlement through collective bargaining is always to be preferred for, as is obvious, it is the best guarantee of industrial peace which is the aim of

all legislation for the settlement of labour disputes." (para 7 at page 490).

8. In **General manager, Security Paper Mill, Hoshangabad v. R.S. Sharma,** 1986 LAB I.C. 667, the Supreme Court noted that whereas an ordinary settlement arrived at under Section 2(p) of the Act binds the parties to a settlement, on the other hand a settlement in the course of a conciliation proceeding binds under Section 18(3) all parties to the industrial dispute; where the party is an employer, his heirs, successors or assigns and, where one of the parties is comprised of workmen, all persons who were employed in the establishment or part of the establishment to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment. The Supreme Court emphasises the importance of a settlement arrived at in conciliation in the following observation:

> "Law thus attaches importance and sanctity to a settlement arrived at in the course of a conciliation proceeding since it

> carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above." (emphasis supplied).

9. The approach of the Industrial Tribunal was fundamentally misconceived. All the aforesaid judgments were specifically cited before the Industrial Tribunal and the citations have been incorporated in para 5 of the order. The Industrial Tribunal responded by observing that there could not be any dispute with the ruling laid down therein. Having said this, the Industrial Tribunal, it would appear, has paid no heed to the binding principles of law which have been laid down by the Supreme Court in these judgments. For, if the Tribunal were to have due regard to the law laid down by the Supreme Court, it would be necessary for the Tribunal to take cognizance of the importance which has been enunciated by the Supreme Court in successive cases of a settlement which has been arrived at in the course of conciliation. In **New Standard Engg. Co.**

Ltd. Vs. M.L. Abhyankar, the Supreme Court noticed that the possibility of an adverse decision of the Court operates as a positive force in favour of deliberate and careful effort by both parties to settle their dispute through direct negotiations. The Court noted that it was that force which had brought about a settlement during the pendency of the proceedings before it. In the present case it is of course correct that the settlement that has been arrived at in the course of conciliation was not with the First Respondent at whose behest the reference has been made, but with the Second Respondent. That however, in my view ought not to make a difference in principle to the sanctity of a settlement arrived at in the course of conciliation. Indeed, as the Supreme Court observed in **General Manager, Security Paper Mill Hoshangabbad vs. R.S. Sharma** (supra), there is a presumption that the settlement which is arrived at in the course of conciliation is just and fair and that is the foundation upon which the Industrial Disputes Act, 1947 makes such a settlement binding on all parties as well as other workmen of the establishment to which such a settlement relates.

10. In the circumstances, I am of the view that the Industrial Tribunal erred in declining to consider the merits of the application filed by the petitioner. The order passed by the Tribunal on 21st December 2004 is accordingly quashed and set aside. The application filed by the Petitioner (Exh.C) to these proceedings on 3rd December 2004 is accordingly restored to file. The application is purported to have been signed on behalf of the Petitioner as well as the Second Respondent. The order of the Tribunal rejecting the application of the Second Respondent to be impleaded as a party has been confirmed by this Court. The application, therefore, shall be heard and proceeded with, on the foundation that the application is filed by the Petitioner. The Petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.

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